

CHAPTER 23

COMMUNITY DEVELOPMENT BLOCK GRANT NONENTITLEMENT PROGRAM

261—23.1(15) Goals and objectives. The Act apportions funds to states, on a formula basis, to be used by local governments for the purposes listed in this rule.

As outlined in Section 101(c) of the Act, the primary goal of this program is “the development of viable urban communities, by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.”

In addition to national program goals and objectives, the state of Iowa will address the following objectives through its administration of the program:

1. Ensure neutrality and fairness in the treatment of all applications submitted;
2. Design the program to be flexible enough to address community priorities as required by federal statute;
3. Promote economic development activities that principally benefit low- and moderate-income persons through job creation;
4. Promote the development of affordable housing; and
5. Assist communities in the preservation and development of basic infrastructure.

261—23.2(15) Definitions. When used in this chapter, unless the context otherwise requires:

“*Act*” means Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383, PL 97-35, PL 98-181, PL 100-242).

“*Adjusted income*” means annual income reduced by eligible deductions such as for dependents, child care and medical expenses, as defined by HUD.

“*Administrative plan*” means a document that recipients of CDBG funds under the Housing Fund must submit which describes the operations of their project or program.

“*Affordable housing*” means housing where the occupant is paying no more than 30 percent of adjusted income for housing costs.

“*Application on behalf of*” means any application submitted by one applicant requesting funds for one or more other eligible applicants.

“*Average county wage scale*” means the calculation of wages using the four most current quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa department of employment services, audit analysis section. Agricultural/mining and government categories are deleted in the compiling of the wage information.

“*Business start-up*” means a business which has not been in operation for more than two years prior to the date of an application being submitted to the economic development set-aside program.

“*Community*” means any eligible applicant.

“*Community development block grant nonentitlement program*” means the grant program authorized by Title I of the Housing and Community Development Act of 1974, as amended, for cities and counties except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

“*Community facilities and services fund*” means the portion of the competitive program targeted to uses other than water and sewer (sanitary and storm) projects.

“*Competitive program*” means the CDBG nonentitlement program, excluding the economic development set-aside as described in rule 23.8(15), the public facilities set-aside described in subrule 23.9(2), the housing assistance set-aside program, described in rules 23.11(15) and 23.12(15), and the imminent threat contingency fund described in 23.10(15).

“*Conversion*” means changing the use of a nonresidential structure into a residential structure and is regarded as new construction.

“*DED*” or “*IDED*” means the Iowa department of economic development.

“*Economic development*” means the alleviation of physical and economic distress through the stimulation of private investment and community revitalization for projects involving the creation of new jobs or the retention of existing jobs that would otherwise be lost.

“Economic development set-aside” means a separate allocation to cities and counties to provide direct financial assistance to private enterprise for projects involving the creation of new jobs or the retention of existing jobs that would otherwise be lost.

“Eligible applicant” means any county or incorporated city within the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

“Equity” means funds or other interest contributed to the project by the owners of business, other than loans, credit, liens, mortgages, or other liabilities.

“Essential services” means services concerned with employment, physical health, mental health, substance abuse education, or food, including the staff salary necessary to provide such services.

“Grant” means funds received through the community development block grant nonentitlement program.

“HART” means the Housing Application Review Team, a body of affordable housing funding agencies which meets monthly to review proposals.

“Historic sites” means any site listed on the national register of historic sites or any other site deemed to have historical significance by the department of cultural affairs, state historical society of Iowa.

“Homeless” means (1) an individual or family that lacks a fixed, regular and adequate nighttime residence or (2) an individual or family that has a primary residence that is:

1. A publicly or privately operated supervised shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
2. An institution that provides a temporary residence for individuals intended to be institutionalized; or
3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of Congress or a state law.

“Homeless shelter” means any entity meeting one of the following definitions:

1. Emergency shelter—any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless; and
2. Transitional housing—a facility that provides housing and supportive services to homeless persons with the purpose of facilitating the movement of homeless individuals to independent living within a reasonable amount of time, not to exceed 24 months for any homeless individual.

“Housing activity” means housing rehabilitation, acquisition, demolition, and relocation activities and new construction (as allowed by the Housing and Community Development Act of 1974 as amended, Section 105) directly related to the promotion or creation of safe, decent, sanitary, affordable, single-family and multifamily housing units. Directly related eligible activities include: conversion costs, disposition, code enforcement planning, new construction (i.e., developer fees, architectural and engineering fees), historic preservation, renovation, and architectural barrier removal.

“Housing project” means eligible activities that specifically address or are in direct support of housing activities. These may include, but are not limited to, the following: housing rehabilitation, real property acquisition, relocation, clearance/demolition, and planning.

“HUD” means the U.S. Department of Housing and Urban Development.

“Joint application” means an application submitted by more than one eligible applicant to complete a single project for the benefit of all those applying.

“Local development corporation” means any entity meeting one of the following:

1. Organized pursuant to Title VII of the Head Start, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Betterment Act of 1981 (42 U.S.C. 9801 et seq.);
2. Eligible for assistance under Section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

3. Incorporated under state or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which is similar in purpose, function and scope to those specified in "1" or "2" above; or

4. Eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

"Local effort" means matching contributions provided by public or private sources which are used to directly support the costs of program activities as described in the application.

"Low- and moderate-income families" means those families earning no more than 80 percent of the higher of the median family income of the county or the statewide nonmetropolitan area as determined by the latest U.S. Department of Housing and Urban Development, Section 8 income guidelines. This includes single person households.

"Low- and moderate-income persons" means members of low- and moderate-income families as defined in this rule.

"Multipurpose application" means an application having two or more major activities.

"Neighborhood-based nonprofit organizations" means an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out.

"Nonentitlement area" means an area which is not a metropolitan city.

"OMB Circular A-87" means the U.S. Office of Management and Budget report entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments."

"OMB Circular A-102" means the U.S. Office of Management and Budget report entitled "Uniform Administration Requirements for Grants and Cooperative Agreements with State and Local Governments." For the CDBG program, the implementing regulations for A-102 are found at 24 CFR Part 85.

"Planning agency" means DED or IDED.

"Private nonprofit organization" means a secular or religious organization in which no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

1. Have a voluntary board and have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or
2. Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and
3. Practice nondiscrimination in the provision of assistance under the permanent housing program in accordance with the authorities described in 24 CFR Sec. 841.330(a).

"Program income" means funds generated by a recipient or subrecipient from the use of CDBG funds. Program income includes, but is not limited to, the following:

- (1) Payments of principal and interest on loans made using CDBG funds;
- (2) Proceeds from the lease or disposition of real property acquired with CDBG funds; and
- (3) Interest earned on CDBG funds held in a revolving fund account during the contract term.

"Project" means an activity or activities funded with community development block grant non-entitlement funds.

"Project sponsor" means a private nonprofit organization that the chief executive official of the applicant approves as to financial responsibility. The project sponsor shall provide (or coordinate the provision of) supportive services to the residents of homeless facilities.

"Recipient" means any eligible applicant receiving funds under this program.

"Section 301(d) small business investment company" means an entity organized pursuant to Section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

"Single purpose application" means an application having only one primary or major activity and any number of other activities incidental to the primary activity.

“Single-year funding” means a project receiving a funding commitment from only one program year’s allocation.

“Supportive services” means services provided by a project sponsor to residents of an eligible homeless facility. Supportive services shall be proposed by the applicant in its application and approved by the department of economic development. Supportive services may include:

1. Medical and psychological counseling and supervision;
2. Employment counseling;
3. Nutritional counseling;
4. Housing counseling;
5. Assistance in obtaining other federal, state, and local assistance available for residents of permanent housing facilities, including mental health benefits; employment counseling; medical assistance; veterans’ benefits; and income support assistance, such as supplemental security income benefits, aid to families with dependent children, general assistance, and food stamps; and
6. Other services, such as child care, transportation, job placement and job training.

“Water and sewer fund” means that portion of the competitive program targeted to water and sanitary and storm sewer projects.

261—23.3(15) Eligibility. All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

261—23.4(15) Eligible and ineligible activities. This rule provides a list of eligible and ineligible activities under the CDBG program.

23.4(1) General policy relating to activities outside an applicant’s boundaries. Applicants may conduct activities which are otherwise eligible for community development block grant assistance which are located outside their boundaries and which are not inconsistent with state or local law only if the applicant can demonstrate that community objectives could not be achieved if the activities were located within the community’s boundaries.

23.4(2) General policies relating to special assessments. The term “special assessment” means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, such as streets, curbs and gutters. The amount of fee represents the pro-rata share of the capital costs of the public improvement levied against the benefiting properties. This term does not relate to taxes or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes. The following policies relate to the use of special assessments under the block grant program:

a. The recipient will not attempt to recover any capital costs of public improvements assisted in whole or part under the Iowa CDBG program by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (1) funds received under the Iowa CDBG program are used to pay the proportion of such fee or assessment that relates to the capital cost of such public improvements that are financed from revenue sources other than under Public Law 93-383, as amended, or (2) for purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very low income, the city/county has certified to the state that it lacks sufficient funds received under the Iowa CDBG program to comply with the requirements of clause (1) above.

b. Program funds may be used to pay all or part of special assessments levied against properties owned and occupied by low- and moderate-income persons when such assessments are used to recover that portion of the capital cost of the public improvements financed from sources other than community development block grants, provided that: the assessment represents the property’s share of the capital cost of the eligible facility or improvement; and the installation of the public facilities and improvements was carried out in compliance with requirements applicable to activities assisted under the CDBG program.

23.4(3) Eligible activities. As authorized by Title I, Section 105 of the Housing and Community Development Act of 1974, as amended, and as further defined in 24 Code of Federal Regulations Part 570, activities assisted by this program may include only the following:

a. Acquisition in whole or in part by a public agency or private nonprofit entity, by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of subrule 23.4(4);

b. Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, except as provided in subrule 23.4(4). Public facilities and improvements eligible for assistance are subject to the policies in subrule 23.4(1);

c. Code enforcement in deteriorated or deteriorating areas in which enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

d. Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites;

e. Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

f. Payments to housing owners for losses of rental income incurred in holding for a temporary period housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

g. Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

h. Provision of public services, including but not limited to those concerned with: employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs.

A public service must be either a new service, or a quantifiable increase in the level of a service above that which has been provided by or on behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the state in which it is located) during any part of the 12-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under Title I, and which are to be used for such services, except that no more than 15 percent of the state grant amount may be used for all funded activities under this paragraph;

i. Payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under this title;

j. Payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

k. Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the recipient to be appropriate;

l. Planning activities which consist of all costs of data gathering, studies, analysis and preparation of plans and implementing actions and policy, planning, management capacity-building activities as specified in 24 CFR 570.205;

m. Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities. Funds used for these purposes shall not exceed 10 percent of the CDBG amount and may not exceed 10 percent of the total contract amount. Direct administrative funds used for housing activities may not exceed 20 percent of the CDBG activity amount and the total activity amount. The Iowa department of economic development shall review administrative cost proposals for reasonableness. IDED reserves the right to negotiate administrative costs attributable to CDBG funds.

n. Activities as specified in 24 CFR 570 may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the community has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable;

o. Assistance to neighborhood-based nonprofit organizations, local development corporations, or entities organized under Section 301(d) of the Small Business Investment Act of 1958 to carry out

a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of rule 23.1(15). This may include any activity not specifically listed as ineligible under subrule 23.4(4) except that construction of new housing is eligible under this provision. Allowable activities which are carried out by public or private nonprofit entities include (a) acquisition of real property; (b) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings used for the general conduct of government), site improvements, and utilities and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (c) planning;

p. Financing the rehabilitation of privately owned buildings and improvements, low-income public housing and other publicly owned residential buildings and improvements, and publicly owned nonresidential buildings and improvements otherwise eligible for assistance;

q. Rehabilitation, preservation, and restoration of historic properties, whether publicly or privately owned. Historic preservation does not include, however, the expansion of properties for ineligible uses, such as buildings used for the general conduct of government;

r. Acquisition, construction, reconstruction, rehabilitation or installation of distribution or collection lines and facilities of privately owned utilities, including the placing underground of new or existing distribution or collection lines and facilities;

s. Renovation of closed school buildings for use as an eligible public facility, for a commercial or industrial facility, or for housing;

t. Special economic development activities if they are appropriate to carry out an economic development project. Special economic development activities include:

(1) The acquisition, construction, reconstruction, or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extension. Provision of such assistance shall be limited to funds distributed through the economic development set-aside as provided for in rule 23.8(15) and the public facilities set-aside as provided in rule 23.9(15).

(2) The provision of assistance to private for-profit businesses. Provision of such assistance shall be limited to funds distributed through the economic development set-aside as provided for in rule 23.8(15).

u. Construction of housing assisted under Section 17 of the United States Housing Act of 1937; and

v. Assist in the substantial reconstruction of housing owned and occupied by low- and moderate-income persons where the need for the reconstruction was not determinable until after project initiation or where the reconstruction is part of a neighborhood rehabilitation effort and the recipient determines the housing is not suitable for rehabilitation, and demonstrates to the satisfaction of the department of economic development that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction.

w. Assist in the development, establishment, and operation not to exceed two years after its establishment of a uniform emergency telephone number system if the department of economic development determines that:

(1) Such system will contribute substantially to the safety of the residents of the area served by such system;

(2) Not less than 51 percent of the use of the system will be by persons of low and moderate income; and

(3) Other federal funds received by the recipient are not available for the development, establishment, and operation of the system due to the insufficiency of the amount of the funds, the restrictions on the use of the funds, or the prior commitment of the funds for other purposes by the recipient.

x. Reasonable administrative costs of overall program development, management, coordination, monitoring, and evaluation, and similar costs associated with management of the rental rehabilitation, urban homesteading and housing development program authorized under Section 17 of the United States Housing Act of 1937 and HOME Investment Partnership Program authorized under the National Affordable Housing Act of 1990.

y. Direct home ownership assistance. Provision of direct assistance to facilitate and expand home ownership among persons of low and moderate income, when such assistance is used to subsidize interest rates and mortgage principal amounts; finance the acquisition of housing that is occupied by low- and moderate-income homebuyers; acquire guarantees for mortgage financing from private lenders; provide up to 50 percent of down payment; and payment of reasonable closing costs associated with the purchase.

z. Activities eligible under the Section 108 loan guarantee program.

aa. Activities necessary to the development of energy use strategies and conservation practices used in local government operations.

23.4(4) Ineligible activities. Rescinded IAB 11/10/93, effective 10/22/93.

261—23.5(15) Common requirements for funding.

23.5(1) Minimum threshold criteria. Applicants for funds under any of the programs authorized under the Community Development Block Grant Nonentitlement Program (competitive, economic development set-aside, public facilities set-aside, housing set-aside, imminent threat fund) must meet the following minimum criteria before the application will be considered complete and eligible for ranking:

a. Project(s) must address at least one of the following three objectives:

(1) Primarily benefit low- and moderate-income persons. Fifty-one percent or more of those benefiting from a project(s) must be considered low- and moderate-income persons.

(2) Aid in the prevention or elimination of slums and blight. The application documents the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community, and illustrating that the activity or activities proposed will alleviate or eliminate the conditions causing the deterioration.

(3) Activities designed to meet community development needs having a particular urgency. An activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community, which are of recent origin, or which recently became urgent; that the recipient is unable to finance the activity on its own; and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months prior to original application for CDBG funds.

b. Project funds may only be used for an eligible activity or activities;

c. Evidence of local capacity to administer the grant, such as previous satisfactory grant administration, availability of qualified personnel, or plans to obtain qualified personnel;

d. Acceptable past performance in the administration of community development block grant funds including the timely commitment of program funds, where applicable;

e. Feasibility of completing the identified project with funds requested. If an applicant intends to use other funding sources, they must be identified and the level of commitment and time frames involved must be explained; and

f. Costs incurred on CDBG-funded projects prior to written authorization from DED may not be eligible for reimbursement with CDBG funds.

g. Conduct activities necessary to meet the requirement of the State of Iowa Citizen Participation Plan. Included in this plan is the provision to (1) conduct a public hearing, after adequate prior notice, to furnish citizens information concerning the amount of grant funds available for proposed community development and housing activities and the range of activities that are undertaken, including the amount of funds proposed to be used for activities that will benefit persons of low and

moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted and to assist persons actually displaced, and (2) conduct a public hearing, if assistance is received, to update citizens on the progress of the CDBG grant activities during the implementation phase of the projects. An acceptable method of fulfilling the public hearing requirement is to follow the guidelines for a public hearing set forth in Iowa Code chapter 21, Open meetings, and section 362.3, Publication of notices;

h. Evidence that the community has engaged in a process to identify its community development and housing needs, including the needs of low- and moderate-income persons, and the activities to be undertaken to meet them;

i. All applicants for financial assistance shall comply with the requirements of 261—Chapter 80.

j. Rescinded, IAB 10/14/92, effective 11/18/92.

k. Certifications. All applicants will be required to certify that, if they receive funds under this program, they will comply with the laws and their implementing regulations:

(1) The Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284) and related civil rights and equal opportunity statutes and orders;

(2) Title I of the Housing and Community Development Act of 1974 as amended;

(3) Age Discrimination Act of 1975;

(4) Section 504 of the Rehabilitation Act of 1973;

(5) Section 3 of Housing and Urban Development Act of 1968;

(6) Davis-Bacon Act, as amended (40 U.S.C. 276a-5) where applicable under Section 110 of the Housing and Community Development Act of 1974 as amended;

(7) Lead-Based Paint Poisoning Prevention Act;

(8) 24 Code of Federal Regulations, Part 58;

(9) National Environmental Policy Act of 1969;

(10) Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1979, Title II and Title III;

(11) State of Iowa Citizen Participation Plan;

(12) Other relevant regulations as noted in the CDBG Management Guide;

(13) Certification regarding Drug-Free Workplace Act;

(14) Certification Regarding Government-Wide Restriction on Lobbying;

(15) Prohibition on the Use of Excessive Force and Barring Entrance,

(16) Americans with Disabilities Act;

(17) Section 102 of the Department of Housing and Urban Development Reform Act of 1989;

(18) Contract Work Hours and Safety Act;

(19) Copeland Anti-Kickback Act;

(20) Department of Defense Reauthorization Act of 1986;

(21) Fair Labor Standards Act; and

(22) Hatch Act.

23.5(2) Gap financing. It is the intent of the department to provide financial assistance to projects that exhibit substantial local commitment, including funding sources. The department will make every effort to provide the minimum amount of financial assistance needed to fill the gap in financing remaining after all other local resources have been committed.

261—23.6(15) Allocation of funds.

23.6(1) *Funds for state administration.* Two percent of total program funds including program income plus \$100,000 as allowed by P.L. 93-383, as amended, may be used for state administration.

23.6(2) *Funds for provision of technical assistance.* One percent of total program funds may be used for the provision of additional substantive technical assistance to grant recipients as may be determined necessary by the department.

23.6(3) *Distribution of competitive funds.* The funds remaining after deducting those used for state administration, public facilities set-aside, imminent threat set-aside, housing set-aside, and the economic development set-aside will be open to all eligible applicants on a competitive basis. Seventy percent of funds available will be dedicated to the water and sewer fund. Fifteen percent of funds available will be dedicated to the community facilities and services fund. The remaining 15 percent will be allocated to either fund at the discretion of the director based on requests for funds.

23.6(4) *Economic development/public facilities set-aside.* Twenty percent of the program funds will be reserved for projects funded under the economic development set-aside program and the public facilities set-aside program. If this allocation for the current fiscal year is not fully allocated, the excess will be reallocated to the general competitive program for the following year.

23.6(5) *Funds reserved for the imminent threat program.* \$500,000 may be used each year to fund projects that address an imminent threat to public health, safety or welfare which necessitates immediate corrective action. If this fund is not fully allocated in a program year, the excess will be reallocated to the general competitive fund.

23.6(6) *Funds reserved for housing fund set-aside.* Twenty-five percent of the funds will be used for a housing fund set-aside to be used to improve the supply of affordable housing. If these moneys are not fully allocated in the initially funded program year, the remainder will be reallocated to the general competitive program for the following year.

23.6(7) *Funds reserved for workforce development and job training projects.* Projects supporting workforce development and job training opportunities for low- and moderate-income persons may be funded by the CDBG program. Projects may be funded from any of the existing set-aside categories. The director may designate the source of funds from among the existing set-aside categories.

23.6(8) *Use of recaptured funds.* Recaptured funds will be returned to the general competitive program. Recaptured funds will be committed to current (open) contracts. Preference for reimbursement will be given to those contracts that are from previous years' funding with priority given to those from the earliest year not yet closed out. Reimbursement will then proceed on a first-in/first-out basis.

23.6(9) *Use of funds returned or recaptured from the flood recovery fund.* Any funds returned or recaptured from grants out of the flood recovery fund will be returned to the program component funding category from which originally allocated. All supplemental funding received from HUD will remain in the flood recovery fund until expended.

23.6(10) *Grant ceilings.* Maximum grant awards are as follows:

a. Competitive program.

<u>All Single-Year Applicants</u>	<u>Grant Ceiling</u>
0-999 population	\$250,000
1,000-2,499 population	\$400,000
2,500-14,999 population	\$600,000
15,000-49,999 population	\$800,000

However, no recipients may receive more than \$1,000 per capita, based on the total population within the recipient's jurisdiction. In the case of counties applying on behalf of unincorporated communities within their jurisdiction, the \$1,000 per capita ceiling will pertain to any project benefiting all residents of an unincorporated place or community, not the entire unincorporated population of the county applying. In determining grant ceilings, it is acceptable for a city or county to use any of the following population figures: 1990 census figures; special census figures; adjusted figures based on an annexation that has been completed in accordance with statutory requirements, Iowa Code

chapter 368. In determining grant ceilings, county populations will be calculated on the basis of unincorporated area only.

Joint applications for sewer and water projects may be funded up to their cumulative joint total allowed by population of each jurisdiction participating in the joint project. (A jurisdiction must be formally designated in a 28E agreement between the joint applicants at the time of application submission.) For all other joint applications, an application may be funded up to one and one-half times the maximum amount allowed for either of the joint applicants.

b. Economic development set-aside. The maximum grant award for individual business assistance applications from any city or county is \$500,000 per application. Individual applications with proposed projects involving a business start-up shall be limited to a maximum grant award of \$100,000.

c. Public facilities set-aside. The maximum grant award for individual applications from a city or a county is \$500,000 per application. Individual applications with proposed projects involving a business start-up shall be limited to a maximum grant award of \$100,000.

d. Housing set-aside. The maximum grant award for individual applications from any city or county is \$700,000.

261—23.7(15) Requirements for the general competitive program.

23.7(1) Restrictions on applicants.

a. A community may submit one application per year under the water and sewer fund and may submit one application per year under the community facilities and services fund.

b. An eligible applicant may also submit a separate application if involved in a joint application (but not as the lead applicant) when:

(1) The applicant is bound under a multijurisdictional agreement by state statute to provide a public service that is facilitated by the joint application; and

(2) The project proposed in the joint application is not located in the applicant's jurisdiction.

c. No applications for housing activities may be submitted under the general competitive program. (All housing activities/project applications must be submitted under the Housing Set-Aside, 261—23.11(15).)

d. All eligible applicants may apply for single-year, single-purpose, or multipurpose funding. Single-year funding does not necessarily require project completion within a 12-month period.

e. Communities may not apply on behalf of eligible applicants other than themselves. Applicants will be allowed, however, to utilize staff from counties, areawide planning organizations, or other jurisdictions to administer the program.

23.7(2) Application procedure. Each year, prior to solicitation of general competitive applications, the department of economic development will, to the extent funds are available for this purpose, conduct a training program for all eligible applicants. All eligible applicants will be notified of the time, date, place and agenda by mail. Application instructions and all necessary forms will be available upon written request to the Department of Economic Development, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309, or by telephone (515)242-4825. The training program will include a discussion of the program's purpose, eligible and ineligible program activities, and instructions regarding the preparation and submission of an application.

A preapplication shall be required for all community facilities and services fund requests for funding. Potential applicants may request preapplication materials from the department of economic development at the address and telephone number listed above.

Review of competitive applications will be performed by DED personnel after consultation, where appropriate, with other state agencies with program responsibility in project-related areas. All applications meeting threshold requirements will be reviewed within 90 days of the final submission deadline.

Applications will be funded to the extent that competitive program funding is available. All successful applicants will be notified and invited to a conference with DED personnel to outline procedures to be followed as grant recipients.

23.7(3) Contents of application. Each general competition application must address each of the threshold criteria and demonstrate that each criterion has been satisfied. In addition, each application must contain each of the following items:

- a. Description of community need (and how need was determined);
- b. Project description (includes amount of funding requested, use of funds, project's impact on community need, project schedule, and notification as to whether the project is located in a flood-plain);
- c. Percent of project addressed towards low- and moderate-income persons, including method of determination;
- d. Description of local effort, including the amount;
- e. Financial information pertaining to the applicant community; and
- f. Construction cost estimates specified in the application.

23.7(4) Reserved.

23.7(5) Review factors. The following review system will be used to rank applications under the competitive program. Project-specific information is obtained from data contained in the application.

- a. Water and sewer fund.
 - (1) Magnitude of need identified by community;
 - (2) Project impact—extent to which project(s) addresses community need;
 - (3) Percent of project funds benefiting low- and moderate-income persons;
 - (4) Local effort; and
 - (5) Certified community builder plan.
- b. Community facilities and services fund.
 - (1) Project impact;
 - (2) Project feasibility;
 - (3) Percent of project funds benefiting low- and moderate-income persons;
 - (4) Local effort; and
 - (5) Certified community builder plan.

23.7(6) Rescinded IAB 11/19/97, effective 12/24/97.

23.7(7) Rescinded IAB 11/19/97, effective 12/24/97.

23.7(8) *Contingent funding applications.* IDED reserves the right to make an award to an applicant community contingent upon receipt of other necessary outside funding. The applications for other funding must be made prior to application for CDBG funds.

a. If the application for necessary other funding is rejected by the outside funding source, the CDBG award is no longer valid. If the outside funding is rejected or not obligated by July 1 following the announcement of the CDBG award, IDED will award the CDBG funds made available to the highest scoring application not funded. Upon written request, IDED will consider waivers to this deadline on a case-by-case basis in those instances where other funds have not been obligated but show high likelihood of approval.

b. If outside funding for applicants receiving contingent awards is obligated after June 30 but before October 1, IDED will commit funds out of the next year's CDBG program.

23.7(9) Rescinded IAB 11/19/97, effective 12/24/97.

23.7(10) *Verification of data.* Applications which rate high enough to be funded will be reviewed to verify figures or statements in the applications. At the discretion of DED, this may include site visits. In cases where inaccuracies, omissions, or errors are found, DED will have the discretion of rejecting the application or rerating it based on correct information. In cases where an applicant loses funding through this process, its grant amount or portion thereof may be awarded to the next highest ranking nonfunded applicant(s). In an instance where the highest ranking nonfunded applicant requests more funds than are available, DED will have complete discretion concerning the disposition of the excess funds, including renegotiating the amount requested or carrying those funds over to the next program year.

23.7(11) *Negotiation of grant awarded.* DED reserves the right to negotiate the amount of the grant award, the scale of the project and alternative methods of completing the project.

261—23.8(15) Requirements for the economic development set-aside program.

23.8(1) *Restrictions on applicants.*

a. Economic development set-aside awards will be limited to forgivable loans and direct loans.

b. Multiyear funding commitments will not be allowed under the economic development set-aside program.

c. A community may not apply on behalf of eligible applicants other than itself.

d. The average starting wage of the jobs to be created or retained by the proposed project must meet or exceed 75 percent of the average county wage scale.

e. Proposed projects involving business start-ups may apply for no more than \$100,000.

23.8(2) Application procedure. Application forms and instructions will be available upon written request from the Department of Economic Development, Division of Business Development, Bureau of Business Financing, 200 East Grand Avenue, Des Moines, Iowa 50309, or by telephone (515)242-4819. An original and two copies of completed applications with attachments shall be submitted to the same address.

Applications for the economic development set-aside will be accepted by the department of economic development at any time and will be considered on a continuous basis. The department of economic development shall take action on complete applications within 60 days of receipt. Action may include funding the application for all or part of the requested amount, denial of the application for funding, or requesting that additional information be supplied prior to making a final decision.

Review and ranking of applications will be performed by IDED personnel.

23.8(3) Contents of applications. Each application must address each of the threshold criteria in subrule 23.8(4) and demonstrate that each criterion has been satisfied. In addition, each application must contain the following:

- a. Project description (use of funds and project schedule);
- b. Project budget (including other public funds, private loans, and owner's equity); and
- c. Certifications. Applications under the economic development set-aside program will be required to certify that, if they receive funds under this program, they will comply with the same certifications required by applicants for the competitive program (see paragraph 23.5(1) "i").

23.8(4) Threshold criteria. In addition to all minimum requirements listed in rule 23.5(15) all applicants for economic development set-aside funds must satisfy the following minimum requirements to be eligible for funding.

- a. At least 51 percent of the permanent jobs created or retained by the proposed project will be taken by or made available through first consideration activities to persons from low- and moderate-income families;
- b. A minimum ratio of one permanent job created or retained for every \$10,000 of CDBG funds awarded must be maintained;
- c. Terms of conventional loans which are part of the project must be consistent with terms generally accepted by conventional financial institutions for the proposed use of funds;
- d. There must be evidence of adequate private equity;
- e. There must be evidence that the economic development set-aside funds requested are necessary to make the proposed project feasible;
- f. There must be evidence that the business requesting assistance can continue as a "going concern" in the foreseeable future, if provided the requested assistance;
- g. Projects consisting of a business relocation from within the state will not be considered unless unusual circumstances exist which make the relocation necessary for the business's viability; and
- h. No significant negative land use or environmental impacts will occur as a result of the project.

23.8(5) Rating factors.

a. The following rating system will be used to rank applications under the economic development set-aside program. The highest point total possible is 425. Projects receiving a rating of 250 or more will be recommended for funding.

- (1) Number of jobs per CDBG funds requested, 100 points possible;
- (2) Percent of funds other than CDBG funds in the project (e.g., private or public loans), 100 points possible;
- (3) Need and impact of the project. Considerations are to include local employment conditions, resultant new economic activity, in-state competition, market saturation, planned hiring under programs of the Job Training Partnership Act, project schedule, leveraging of other resources, beneficial impact on the tax base, and project feasibility, including the probability that the project will accomplish the projected benefits, 200 points possible; and

(4) Certified community builder community, 25 points possible. A community will receive 25 points upon completion and subsequent certification by the department of a plan prepared according to 261—Chapter 80, “Additional Program Requirements.”

b. The rating system gives priority to projects that will create manufacturing jobs and projects that add value to Iowa resources. Refinancing or restructuring of existing loans and projects involving a single retail establishment will be considered low priorities.

c. The rating system gives preference to direct loans over forgivable loans.

23.8(6) *Verification of data.* All applications will be reviewed to verify figures or statements in the applications. At the discretion of IDED, this may include site visits. In cases where inaccuracies, omissions, or errors are found, IDED will have the discretion of rejecting the application or rerating it based on correct information.

23.8(7) *Negotiations of funds awarded.* The amount of CDBG funds awarded shall be the minimum necessary to make the proposal feasible. IDED reserves the right to negotiate the effective interest rate, terms, or other conditions of the award prior to final award.

23.8(8) *Provisions for revolving loan fund when the award is in the form of a direct loan to the business.* Income received by a community as a result of repayment of the loan may be retained and used by a community if the recipient can clearly demonstrate the ability to administer a revolving loan fund. Communities that cannot or choose not to establish a revolving loan fund must promptly return principal and interest to the department of economic development. The funds will be deposited into the current year’s economic development set-aside fund.

In order for a community to demonstrate its ability to administer a revolving loan fund, a reuse plan must be submitted to and approved by the IDED prior to the community’s receipt of the first repayment of the loan. The plan must address, at a minimum, the following:

- a.* Eligible types of businesses and activities;
- b.* Any limits on amount or terms of assistance provided;
- c.* Any requirements placed on businesses in return for assistance (job creation, dollars invested, etc.) with time period allowed for performance by business;
- d.* Application process;
- e.* Selection process used to determine recipients;
- f.* Certification that all CDBG regulations will be complied with including, but not limited to, assurance that at least 51 percent of the jobs affected by the assistance will be taken by or made available through first consideration activities to persons from low- and moderate-income families;
- g.* Description of administrative and financial management procedures, including identification of key administrative personnel and what amount, if any, would be used for administrative costs;
- h.* Description of how idle funds would be managed/invested; and
- i.* Provisions for ensuring that funds will be adequately capitalized to make it an efficient and effective assistance mechanism. (Minimum required size allowable is \$50,000 within five years from establishment.)

The IDED may require any community having an economic development set-aside (EDSA) revolving loan fund to apply the balance or a portion of the balance of the fund to any proposed eligible project within the community when assistance is being sought from the state through the economic development set-aside program, the community economic betterment account (CEBA) or other IDED programs providing direct financial assistance to a business. Any program income from a prior economic development set-aside funded project received during an open economic development set-aside contract must be applied to the open contract prior to drawing additional funds from the economic development set-aside program.

Any community opting to retain program income and establish a revolving loan fund must use the money for activities that would qualify under the Iowa economic development set-aside program, including threshold requirements, and must be consistent with the state strategic plan for economic development. These requirements also apply to program income received after original grant close-out.

23.8(9) *Comprehensive management assistance and entrepreneurial development.* Rescinded IAB 11/10/93, effective 10/22/93.

261—23.9(15) Application requirements for the public facilities set-aside program.

23.9(1) *Purpose.* The purpose of the public facilities set-aside program is to provide grants to political subdivisions to aid in economic development that will create or retain jobs.

23.9(2) *Application procedure.* Applications for the public facilities set-aside will be accepted by the department of economic development at any time and will be considered on a continuous basis. The department of economic development shall take action on a complete application within 30 days of receipt. Action may include funding the application for all or part of the requested amount, denial of the application or requesting that additional information be supplied prior to making a final decision.

Review and ranking of applications will be performed by IDED personnel. Applications must meet minimum threshold requirements and receive a minimum of 250 points to be funded.

An original and one copy of the application shall be submitted. Application forms and instructions are available upon written request from the Department of Economic Development, Division of Community and Rural Development, 200 East Grand Avenue, Des Moines, Iowa 50309, or by calling (515)242-4825.

23.9(3) *Eligible projects.* Projects eligible for funding under the public facilities set-aside program include, but are not limited to, the following: sanitary sewer systems; water systems; streets and roads; storm sewers; rail; and airport facilities.

23.9(4) *Contents of applications.* Each application must address each of the threshold criteria, and demonstrate that each criterion has been satisfied. In addition, each application must contain the following:

- a. Project description (use of funds and project schedule);
- b. Project budget (including other public funds, private loans and business entity commitment); and
- c. Certifications. Applicants under the public facilities set-aside program will be required to certify that, if they receive funds under the program, they will comply with the same certifications required by applicants for the competitive program as cited in rule 23.5(15).
- d. Business assessment plan. The business assessment plan shall include for each identified business a projection of the number of jobs to be created or retained as a result of the public improvement proposed or assistance from block grant funds.

23.9(5) *Selection criteria for public facilities set-aside program.*

a. Threshold criteria. All applicants for public facilities set-aside funds must satisfy the following minimum requirements to be eligible for funding as well as the minimum requirements listed in subrule 23.5(1).

(1) At least 51 percent of the permanent jobs created or retained by the proposed project will be taken by or made available through first consideration activities to persons from low- and moderate-income families;

(2) A minimum ratio of one permanent job created or retained for every \$10,000 of CDBG funds awarded must be maintained;

(3) Local governments must contribute 50 percent of the total amount of funds requested from the public facilities set-aside;

(4) There must be evidence that the CDBG funds requested are necessary to make the proposed project feasible;

(5) There must be evidence that the project is feasible and that the business requesting assistance can continue as a “going concern” in the foreseeable future;

(6) Jobs created as a result of other jobs being displaced elsewhere in the state will not be considered new jobs created for the purpose of evaluating the application; and

(7) No significant negative land use or environmental impacts will occur as a result of the project.

b. Rating factors. The following rating system will be used to rank applications under the public facilities set-aside program. The highest point total is 425.

(1) Number of jobs per CDBG funds requested, 100 points possible;

(2) Percent of funds other than CDBG funds in the project (e.g., private or public loans), 50 points possible;

(3) Need and impact of the project. Considerations are to include local employment conditions, resultant new economic activity, planned hiring under programs of the Job Training Partnership Act, use of other public incentives, project schedule, and property tax enhancement and other effects on the local tax base, 100 points possible;

(4) Local government financial need. The applicant local government must demonstrate the need for financial assistance for the public facilities project. Factors such as bonding capacity, tax capacity and tax effort will be considered, 100 points possible;

(5) Local effort. Local governments must contribute 50 percent of the total amount of public facilities set-aside funds requested to meet minimum threshold requirements. Points will be awarded for contributions above the required minimum, 50 points possible; and

(6) Certified community builder community, 25 points possible. A community will receive 25 points upon completion and subsequent certification by the department of a plan prepared according to 261—Chapter 80, “Additional Program Requirements.”

c. Ties in applications. Ties will be decided in favor of the project showing the highest number of jobs created or retained.

d. Each activity must receive a score of at least 25 points out of a possible 100 points for the “need and impact” rating criterion in order to receive CDBG funding.

23.9(6) Reserved.

23.9(7) *Verification of data.* Applications which rate high enough to be funded will be reviewed to verify figures or statements in the applications. At the discretion of IDED, this may include site visits. In cases where inaccuracies, omissions, or errors are found, IDED will have the discretion of rejecting the application or rerating it based on correct information.

23.9(8) *Negotiations of funds awarded.* The amount of CDBG funds awarded shall be the minimum necessary to make the proposal feasible. IDED reserves the right to negotiate the amount and conditions of the grant prior to award.

261—23.10(15) Imminent threat contingency fund. Up to \$500,000 of program funds allocated to the state may be reserved for communities which are experiencing an imminent threat to public health, safety, or welfare which necessitates corrective action sooner than could be accomplished through the regular application process under the nonentitlement program. In addition, the state may use any program funds available or short-term grants for this program.

Communities in need of these funds must submit a written request to the Imminent Threat Program, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request must include a description of the community’s problem, the amount of funding requested, projected use of funds, and why the problem cannot be remedied through normal CDBG funding procedures.

Upon receipt of a request for imminent threat funding, IDED will make a determination as to whether the community and the project are eligible for funding. This determination will be made by IDED, after consultation with appropriate federal, state, or local agencies. A project will be considered eligible for funding only if it meets all of the following criteria:

1. The proposed project must be an eligible project;

2. An immediate threat must exist to health, safety, or community welfare that requires immediate action;

3. The threat must be the result of unforeseeable and unavoidable circumstances or events;

4. No known alternative project or action would be more feasible than the proposed project;

5. Sufficient other local, state, or federal funds (including the competitive CDBG program) either are not available, or cannot be obtained within the time frame required.

IDED will coordinate the request for funds with other public agencies, such as the office of disaster services, as appropriate. If IDEED determines that the community and the proposed activity are eligible for funding, it shall notify the applicant of its determination.

Any community receiving funds under the imminent threat program must comply with all laws, rules, and regulations applicable to the CDBG nonentitlement program, except that the department may choose to waive those state administrative rules not required by federal law.

261—23.11(15) Requirements for the housing set-aside program. Specific requirements for the housing set-aside program are listed separately at 261—Chapter 25, Housing Fund.

261—23.12(PL93-383) CDBG interim financing program.

23.12(1) Objective. The objective of the CDBG short-term grant program is to benefit persons living within eligible Iowa communities by providing short-term or interim financing for the implementation of projects which create or retain employment opportunities, which prevent or eliminate blight, or which accomplish other federal and state community development objectives.

23.12(2) Eligibility. All nonentitlement cities and all counties in the state of Iowa are eligible to apply for and receive assistance through the CDBG short-term grant program.

23.12(3) Eligible activities. Funds provided through the CDBG short-term grant program may be used in the accomplishment of the following activities:

a. Short-term assistance, interim financing, or construction financing for the construction or improvement of a public work.

b. Short-term assistance, interim financing, or construction financing for the purchase, construction, rehabilitation, or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances, or other projects undertaken by a for-profit organization or business or by a nonprofit organization.

c. Short-term or interim financing assistance for otherwise eligible projects or programs.

23.12(4) Application procedure.

a. Applications may be submitted at any time. Applications shall be processed, reviewed, and considered on a first-come, first-served basis. Funding decisions will be made by the department within 30 days of receipt of a complete application and to the extent that funds are available.

b. Applications shall be made in a form and with contents as prescribed by the department of economic development.

c. Applications received by IDED which are incomplete or require additional information, investigation or extended negotiation may lose funding priority.

23.12(5) Selection criteria.

a. *Threshold criteria.* All applicants for CDBG short-term grant program funds must satisfy the following minimum requirements to be eligible for funding:

(1) Evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel.

(2) Where applicable, acceptable previous performance in the administration of state or federal programs such as the community development block grant.

(3) Feasibility of completing identified project with funds requested. If an applicant intends to use other funding sources, the applicant must be identified and the level of commitment and time frames involved must be explained.

(4) Project must address at least one of the following three objectives:

1. Primarily benefit low- and moderate-income persons. Fifty-one percent or more of those benefiting from a project must be considered low- and moderate-income persons.

2. Aid in the prevention or elimination of slums and blight. The application documents the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community, and illustrating that the activity or activities proposed will alleviate or eliminate the conditions causing the deterioration.

3. Activities designed to meet community development needs having a particular urgency. An activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months prior to original application for CDBG funds.

(5) Project funds may be used only for an eligible activity or activities.

(6) Project funds may not be incurred prior to written authorization to incur costs.

(7) Conduct a public meeting or furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low- and moderate-income and the plans of the applicant to minimize displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities. One method of meeting this requirement is to follow the guidelines for a public hearing set forth in Iowa Code section 362.3.

(8) Evidence that the community has engaged in a process to identify its community development and housing needs, including the needs of low- and moderate-income persons, and the activities to be undertaken to meet such needs.

(9) There must be evidence that the funds requested are necessary to make the proposed project feasible.

(10) No significant negative land use or environmental impact will occur as a result of the proposed project.

(11) There must be evidence that the proposed project will be completed within 30 months of the date of grant award.

(12) The amount of funds requested does not exceed \$20 million.

(13) There must be evidence of an irrevocable letter of credit, or equivalent security instrument, from an AA or better rated lending institution, assignable to IDED, in an amount equal to the CDBG short-term grant funds requested plus interest, if applicable.

(14) There must be evidence of the commitment of permanent financing for the project.

(15) Applicant must provide an assurance that any program income earned or received as a result of the project shall be returned to IDED on or before the end date of the grant contract.

b. Rating criteria. If one application has satisfied all the threshold criteria described in subrule 23.12(5), paragraph “a,” it shall be subjected to the following evaluation criteria:

- (1) Does CDBG participation leverage substantial local financing participation?
- (2) Is the cost of CDBG short-term grant funds per person benefited reasonable?
- (3) Is the need for CDBG assistance reasonable?

(4) Does the public benefit substantially exceed the value of the proposed assistance? As measured by the present value of proposed assistance to:

1. The direct wages and aggregate payroll lost,
2. The indirect wages and aggregate payroll lost,
3. The dislocation and potential absorption of workers,
4. The loss of economic activity.

23.12(6) *Negotiation of funds awarded.* The amount of CDBG short-term grant funds awarded shall be the minimum necessary to make the proposal feasible. IDED reserves the right to negotiate the terms and conditions prior to grant award.

23.12(7) *Funding allocation.*

a. An amount not to exceed \$25 million shall be made available for grants under the CDBG short-term grant program during any program year.

b. IDED reserves the right to award grants totaling a lesser amount should overall CDBG funding be reduced or should the CDBG competitive program grantees' use of funds exceed forecasts.

23.12(8) *Program income.* All program income earned and received under the CDBG short-term grant program and as a result of the funded project shall be returned to IDED on or before grant closeout.

23.12(9) *Administration.* Grant recipients under the CDBG short-term grant program shall be subject to all the requirements specified in rule 23.10(15).

This rule is intended to implement Public Law 93-383.

261—23.13(15) *Administration of Community Development Block Grant Award.* This rule applies to all grant recipients awarded funds from any of the programs operated under the CDBG program.

23.13(1) *Contracts.* Upon selection of a project(s) for funding, the department of economic development will issue a contract. In the absence of special circumstances in which there is a legal incapacity on the part of the community to accept funds for eligible activities, the contract shall be between the department of economic development and the community. The designation by the community of another public agency to undertake activities assisted under this program shall not relieve the community of its responsibilities in ensuring the administration of the program will be in accordance with all federal and state requirements, including these rules. The rules and applicable federal and state laws and regulations become a part of the contract.

a. CDBG recipients must execute and return the contract to the IDED within 45 days of the transmittal date from IDED (i.e., date on cover letter). Failure to do so may be cause for termination of the award.

b. Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of such requirements.

23.13(2) *Eligible and ineligible local effort.* This subrule provides the general policies for determining the eligibility or ineligibility of local effort funds.

a. Eligible local effort.

(1) Public or private funds (cash or loans) to be used to directly support the costs of program activities contained in an application will generally be considered as eligible local effort if those funds can be considered as discretionary or not restricted to specific purposes. Types of cash or loans that can be considered as eligible local effort include, but are not limited to:

General fund or other cash;

General obligation or revenue bonds;

Loans;

Certain federal funds such as Federal Aid to Urban Systems funds, Road Tax funds, Revenue Sharing funds;

Certain state funds such as municipal assistance funds, beer and liquor control funds, state road use funds; and

Farmers Home Administration loans.

(2) The value of land that is provided by public or private sources to be used to directly support program activities contained in an application can be considered as eligible local effort. The value of the land will not exceed its assessed value unless an appraisal is conducted to determine the fair market value. The appraisal will be considered valid if conducted by a certified appraiser.

(3) The value of buildings provided by public or private sources which are used to directly support program activities contained in an application can be considered as eligible local effort. The value of the building(s) will not exceed its assessed value unless an appraisal is conducted to determine its fair market value. The appraisal will be considered valid if conducted by a certified appraiser. The value of a building is eligible local effort only if the building is to be converted to a new use. Improving, renovating, or rehabilitating a building for the same use would not qualify the building's value as eligible local effort.

(4) Force account labor provided by the community to directly support program activities contained in an application can be considered as eligible local effort. The value of force account labor used as local effort is determined by the actual, documentable cost to the community, such as an individual's hourly rate of pay multiplied times the number of hours contributed.

b. Ineligible local effort.

(1) Public or private funds will generally be considered as ineligible local effort if those funds are nondiscretionary or restricted to specific purposes. Types of funds considered as ineligible local effort include, but are not limited to:

Environmental Protection Agency or the Iowa Department of Natural Resources grant funds;

Economic Development Administration grant funds;

Revitalize Iowa's Sound Economy grant funds; and

Farmers Home Administration grant funds.

(2) Public or private funds used to directly support the costs of activities that are not proximate and integrally related to the other activities contained in an application will be considered as ineligible local effort.

(3) Public or private funds used to directly support the costs of activities that are otherwise considered as ineligible activities, subrule 23.4(4), will be considered as ineligible local effort.

23.13(3) *Financial management standards.*

a. All recipients shall comply with 24 CFR, Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments.

Any clarifications or modifications of these standards by the state shall be clearly stated in the Iowa CDBG Management Guide provided to each grant recipient. Where requirements differ between the circular and state or local law, the more restrictive requirement shall prevail. Contracts may also be conditioned to provide for other requirements.

b. Allowable costs shall be determined in accordance with OMB Circular No. A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments." Any clarifications or modifications of this standard by the state shall be clearly stated in the Iowa CDBG Management Guide provided to each recipient with the contract.

c. All contracts made under these rules are subject to audit. Recipients shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor.

(1) Recipients which receive more than \$100,000 in federal financial assistance (including a CDBG grant) in any fiscal year must comply with the provisions of the Single Audit Act of 1984 (P.L. 98-502) and 24 CFR, Part 44. In addition, recipients receiving between \$25,000 to \$100,000 in assistance may choose to comply with the Single Audit Act. In such cases, the local government must have an annual audit of all its financial statements. The Act should be consulted for additional compliance requirements.

Recipients receiving less than \$25,000 in federal funds in a given fiscal year may have the option of a desk audit with prior approval from IDED.

(2) Recipients who determine that the Single Audit Act of 1984 does not apply to their situation shall have audits prepared in accordance with CDBG requirements and state laws and regulations. All audits shall commence within 60 days of the CDBG program's contract expiration date, and be issued within 150 days of the contract expiration date, unless the recipient conducted annual audits on a fiscal year basis.

Variations of these time requirements shall only be allowed with prior approval from DED. Copies of the audit report shall be transmitted to DED and to other agencies as required.

d. All recipients are required to have a project completion statement included in the final audit of the project funds.

e. Audits done on a fiscal year basis shall be submitted to IDED within six months of the end of the audited fiscal year. Audits performed on the CDBG program only shall be submitted to IDED within six months of the expiration date of the CDBG contract. All audit reports must be submitted to IDED within six months of the expiration date of the CDBG contract. All audit reports must be submitted to IDED within 30 days after publication.

f. Program income.

(1) Units of local government may keep up to \$100 of interest earned on grant funds advanced in the manner prescribed by the Iowa CDBG Management Guide. All other interest earned shall be required to return to the federal government (except for interest described in 23.13(3)"f"(3)).

(2) Proceeds from the sale of personal property shall be handled in accordance with Sections 31, 32, and 33 of 24 CFR, Part 85, implementing OMB Circular A-102.

(3) All other program income earned during the grant period may be retained by the recipient and added to funds committed to the program, provided that they are expended for the same type of activity from which the income was derived.

(4) Recipients may retain program income remaining unexpended at the end of the contract period when the program income will be used for the same activity and the community has an IDED-approved reuse plan for the program income that includes the following:

1. Statement of purpose. How the program income will be used, number and description of beneficiaries (including persons of low and moderate income), type of activities and performance target goals, location of activities, budget for activities and a timetable of completion of budgeted activities; and

2. Certification of compliance. The recipient must certify that it will use the program income in compliance with applicable CDBG administrative rules, including federal and state requirements referenced therein.

(5) Program income received subsequent to grant closeout.

1. Except as may be otherwise provided under the terms of the grant agreement or any reuse plan agreement, program income received subsequent to the end of the grant period may be treated by the recipient as follows: Subject to the requirements of 23.13(3)“f”(5)“2” and “3,” this income may be treated as miscellaneous revenue, the use of which is not governed by the provisions of the grant. Provided, that if the recipient has another continuing grant, the program income received subsequent to the grant closeout shall be treated as program income of the active grant program.

2. Disposition of tangible personal property. The recipient shall account for any tangible personal property acquired with grant funds in accordance with Sections 31, 32 and 33 of 24 CFR, Part 85, implementing OMB Circular No. A-102.

3. Disposition of real property. Proceeds derived after grant closeout from the disposition of real property acquired with grant funds under this program shall be subject to the program income requirements of 23.13(3)“f”(5)“1” above, provided that where such income may be treated as miscellaneous revenue pursuant to 23.13(3)“f”(5)“1” above, it shall be used by the recipient for community development activities eligible pursuant to 23.4(3) to further the general purposes and objectives of the Act. The use of income subject to this provision is not governed by any other requirements of these rules.

4. Recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.) as part of the grant program transactions.

g. Changes in use of real property. The standards described in this paragraph “g” apply to real property within the unit of local government’s control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 85.36, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments). These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of local government’s grant.

(1) A unit of local government may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the unit of local government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

1. The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

2. The requirements in 23.13(3)“g”(2) are met.

(2) If the unit of general local government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under 23.13(3)“g”(1), it may retain or dispose of the property for the changed use if the unit of local government’s CDBG program is reimbursed or the state’s CDBG program is reimbursed at the discretion of the state. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within five years of such closeout, the unit of local government shall make the reimbursement to the state’s CDBG program account.

(3) Following the reimbursement of the CDBG program as outlined in 23.13(3)“g”(2) the property no longer will be subject to any CDBG requirements.

23.13(4) Requests for funds. Grant recipients shall submit requests for funds in the manner and on forms prescribed by DED. Individual requests for funds must be made in an amount equal to or greater than \$500 per request, except for the final draw of funds.

23.13(5) Record keeping and retention. Financial records, supporting documents, statistical records, the environmental review records required by 24 Code of Federal Regulations 58.30, and all other records pertinent to the program shall be retained by the recipient for four years after contract closeout in accordance with the provisions of the Iowa CDBG Management Guide, including the following:

a. Original grant application, including supporting documentation such as engineering reports and studies, local community needs surveys, evaluations prepared by outside authorities/consultants, state and federal agency material pertinent to project.

b. Records for any displaced person shall be retained for four years after that person has received final payment;

c. Records pertaining to each real property acquisition shall be retained for four years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with 23.13(5)“a,” whichever is later;

d. Representatives of the Secretary of the Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor’s office, and the department of economic development shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of assistance under these rules.

23.13(6) *Performance reports and review.* Recipients shall submit recipient performance reports to DED as prescribed in the Iowa CDBG Management Guide. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with certain other program requirements.

DED may perform any reviews or field inspections it deems necessary to ensure program compliance, including review of recipient performance reports. When problems of compliance are noted, DED may require remedial actions to be taken. Failure to respond to a notification of need for remedial action may result in the implementation of 23.13(11).

23.13(7) *Multiyear grants.* Rescinded IAB 10/14/92, effective 11/18/92.

23.13(8) *Amendments to contracts.* Any substantive change to a funded CDBG program will be considered a contract amendment. Substantive changes would include contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives, or scale of the approved activities or beneficiaries. Amendments covered by this subrule are subject to the requirements outlined in the State of Iowa Citizen Participation Plan.

a. The amendment must be requested in writing, according to guidelines established in the Iowa CDBG Management Guide. No amendment will be valid until approved in writing by IDED.

b. IDED will not approve the addition of a new activity which is unrelated to the original contract activities, unless IDED is satisfied that all original activities will also be completed per the contract. In such cases, IDED may allow up to \$10,000 of the original CDBG funds to be utilized for a new activity. Amendments for new activities are not subject to rerating; however, they must meet the threshold requirements listed in rule 261—23.5(15).

c. Amendments involving the replacement of one activity with another will not be allowed for projects funded under the economic development set-aside program.

23.13(9) *Grant closeouts.* Upon completion of project activities, recipients will initiate grant closeout in accordance with procedures specified in the Iowa CDBG Management Guide.

23.13(10) *Compliance with federal and state laws and regulations.* All grant recipients shall comply with all applicable provisions of the Act and its implementing regulations, including these rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

23.13(11) *Remedies for noncompliance.* At any time before project closeout, DED may, for cause, find that a recipient is not in compliance with its requirements under this program. At IDED’s discretion, remedies for noncompliance may include penalties up to and including the return of program funds to DED. Reasons for a finding of noncompliance include, but are not limited to: the recipient’s using program funds for activities not described in its application, the recipient’s failure to complete approved activities in a timely manner, the recipient’s failure to comply with any applicable state or federal rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved program in a timely manner.

23.13(12) *Contractors and subrecipients limited.* Project funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by the

Department of Housing and Urban Development under the provisions of 24 Code of Federal Regulations Part 24.

23.13(13) Rescinded, IAB 9/5/90, effective 10/10/90.

261—23.14(15) Special drought relief fund. Rescinded IAB 9/5/90, effective 10/10/90.

261—23.15(15) Rural water system set-aside. Rescinded IAB 10/16/91, effective 11/20/91.

261—23.16(15) Flood recovery fund.

23.16(1) Purpose. The flood recovery fund is reserved for communities which are experiencing an imminent threat to public health, safety or welfare which necessitates prompt corrective action.

23.16(2) Source of funds. The flood recovery fund will be comprised of the following sources of funds, to the extent they are available: FY93 imminent threat contingency fund, supplemental appropriation from the U.S. Department of Housing and Urban Development for flood disaster relief efforts, voluntarily redirected funds from existing recipients, voluntarily deobligated funding from existing recipients, unobligated funds redirected at the discretion of the director of IDED, and interim float awards from unexpended block grant commitments.

23.16(3) Restrictions on applicants.

a. No local effort is required. However, infusion of other local, state or federal resources may be necessary to complete a project.

b. All projects must be otherwise eligible under the CDBG program as described in 261—23.4(15) and be the direct result of the flooding disaster.

23.16(4) Application procedures. Communities in need of these funds must submit a written request to the Flood Recovery Fund, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request must include a description of the community's problem, the amount of funding requested, projected use of funds, and why the problem cannot be remedied through normal CDBG funding procedures.

Upon receipt of a request for imminent threat funding, IDED will make a determination as to whether the community and the project are eligible for funding. This determination will be made by IDED, after consultation with appropriate federal, state, or local agencies. A project will be considered eligible for funding only if it meets all of the following criteria:

1. The proposed project must be an eligible project;
2. An immediate threat must exist to health, safety, or community welfare that requires immediate action;
3. The threat must be the result of unforeseeable and unavoidable circumstances or events;
4. No known alternative project or action would be more feasible than the proposed project;
5. Sufficient other local, state, or federal funds (including the competitive CDBG program) either are not available, or cannot be obtained within the time frame required.

IDEED will coordinate the request for funds with other public agencies, such as the office of disaster services, as appropriate. If IDED determines that the community and the proposed activity are eligible for funding, it shall notify the applicant of its determination.

23.16(5) Compliance with federal and state regulation. Any community receiving funds under this flood recovery fund must comply with all laws, rules, and regulations applicable to the CDBG nonentitlement program, except those waived by HUD as a result of federal action in conjunction with the flood disaster and those state administrative rules that the department may choose to waive that are not required by federal law.

The state will make available a listing of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

261—23.17(15) Workforce development and job training projects.

23.17(1) Purpose. Workforce development and job training projects may be funded under the CDBG program set-aside to coordinate job creation, job skills and job placement for the benefit of low- and moderate-income Iowans.

23.17(2) Restrictions on applicants.

a. No local effort is required for a job training/workforce development project. However, infusion of other local, state or federal resources may be necessary to complete a project.

b. All projects must be otherwise eligible under the CDBG program as described in 261—23.4(15).

c. Rescinded IAB 8/11/95, effective 10/24/95.

23.17(3) Application procedure. Applicants for these funds must submit a written response to a request for proposal issued by the IDED Division of Community and Rural Development and Workforce Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The response to the RFP request must include a description of the community's problem, the amount of funding requested, projected use of funds, and why the problem cannot be remedied through normal funding channels. IDED and workforce development staff will review all responses. Upon receipt of a request for funding, IDED will make a determination as to whether the community and the project are eligible for funding. This determination for funding will be made by IDED, after consultation with appropriate federal, state, or local agencies. A project will be considered eligible for funding only if it meets all of the following criteria:

1. The proposed project must be an eligible project.
2. A threat must exist to the continuation of postsecondary education and job training opportunities that requires immediate action;
3. The proposed project is primarily a benefit to low- and moderate-income persons; and
4. Sufficient other local, state, or federal funds either are not available, or cannot be obtained within the time frame required.

IDED will coordinate the request for funds with other public agencies, such as the department of human services, as appropriate. If IDED determines that the community and the proposed activity are eligible for funding, it shall notify the applicant of its determination.

23.17(4) Compliance with federal and state regulation. Only eligible cities and counties may receive funds under this program and must comply with all laws, rules, and regulations applicable to the CDBG nonentitlement program and all state administrative rules except those that the department may choose to waive that are not required by federal law.

The state will make available a listing of all applicable federal regulations and relevant federal agencies to all applicants upon request.

These rules are intended to implement Iowa Code section 15.108(1)“a.”

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